BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 22.08.2022
CORAM:
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM
Crl.O.P.(MD) No.8231 of 2021
and
Crl.M.P(MD)Nos.7107 and 5560 of 2022
and
Crl.M.P(MD)SR.No.26854 of 2022

S.Ramesh .. Petitioner

Vs.

1. The Inspector of Police
Tallakulam Police Station
Madurai

2. A.R.Sachithananth ....Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records pertaining to the impugned FIR in Crime No.287 of 2022 on the file of the first respondent police Station and quash the same as illegal as against the petitioner alone.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.M.Sakthikumar
No.1 Government Advocate (Crl.Side)
No.2 : Mr. K.Subramanian
Senior Counsel
for Mr.P.Saravanan

ORDER
This Criminal Original Petition has been filed to quash the First Information Report in Crime No.287 of 2022 on the file of the first respondent police.

2. In Crl.O.P(MD)No.8231 of 2022, the second respondent filed Crl.M.P(MD) No.7107 of 2022 to issue direction to the petitioner in the above Crl.O.P(MD)No.8231 of 2022 ~ S.Ramesh to appear before the XVIII Metropolitan Magistrate, Saidapet, Chennai, which has issued the proclamation order and also filed un~numbered petition in Crl.M.P(MD)SR.No.26854 of 2022 to direct the petitioner in Crl.O.P(MD) No.8231 of 2022 ~ S.Ramesh to comply with the conditions imposed by this Court, dated 26.08.2019 in Crl.M.P.No.4791 of 2019 in Crl.R.C(MD) No.330 of 2019 by appearing before the trial Court, Judicial Magistrate, Melur, daily at 10.30 am., pending disposal of the revision filed by him in Crl.R.C(MD) No.330 of 2019.

3. The learned counsel for the petitioner would submit that the petitioner is the son of N.Sethuraman. Her mother Dr.Rajam Sethuraman died on 20.06.2021. The petitioner/accused had taken 2 « kilogram of gold jewels out of 10 kg of gold, 4 diaries and four original title deeds from the residence at Ayyar Bungalow, Sri Nagar, Vaigai 2nd Street, Door No.251/1, Thirugnana Sambathar Thirumaaligai, Madurai. When it was questioned by the complainant, he abused in filthy language and criminally threatened him. Therefore, he gave a complaint to the respondent police and since no action has been taken, he has filed a petition before this Court in Crl.O.P(MD) No.5923 of 2022 and this Court, by order dated 02.02.2022 directed the respondent police to register the case. Based on that order, a case has been registered. Now, it is contended that the offence mentioned in the First Information Report has not been made out and especially, the penal provision under Section 380 IPC will not attract, since he has not taken any movables from the house and especially valuables from the house as they are in the Locker. Apart from this, after the death of his mother, the accused is the one of the legal heirs. The alleged gold jewels and other things were in the Locker. The complainant being a staff working at Meenakshi Mission Hospital and Research Centre, Madurai, colluded with the brother of the accused, namely, Dr. Gurusankar foisted the false complaint and therefore, he prays to quash the First Information Report.

4. The learned Government Advocate(Crl.Side) would submit that the case is under investigation and the respondent police has registered the case as per the orders of this Court and it is under investigation.

5. The learned Senior Counsel appearing for the second respondent/defacto complainant would submit that the conduct of the petitioner is questionable one. He is having a case at XVIII Metropolitan Magistrate Court, Saidapet, Chennai, in which, summons have been issued and he has not appeared before the Court and also contempt petition has been filed before this Court in Cont.P(MD) No.1428 of 2017 and he is evading. He received notice and proclamation order has been issued against the petitioner for his appearance in Crl.M.P.No.3236 of 2021 in C.C. No.4228 of 2015. Further, he was convicted in the criminal case in C.C. No.58 of 2012 by the learned Judicial Magistrate, Melur and in the Appeal filed in C.A.No.9 of 2014, it was confirmed by the appellate Court. He filed a revision against the said order before this Court in Crl.R.C(MD) No.330 of 2019, in which, he filed an application for suspension of sentence in Crl.M.P(MD) No.4791 of 2019 and this Court, by order, dated 26.08.2019 suspended the sentence with condition to execute a bond for a sum of Rs.10,000/~ (Rupees Ten Thousand only) with two sureties and still he has not obeyed the said conditional order. Therefore, he filed Crl.M.P(MD) No.7107 of 2022 to issue a direction to the petitioner in the above Crl.O.P.No.8231 of 2022 ~ S.Ramesh to appear before the XVIII Metropolitan Magistrate, Saidapet, Chennai, which has issued the proclamation order and also filed un~numbered petition in Crl.MP(MD)SR.No.26854 of 2022 to direct the petitioner in Crl.O.P(MD) No.8231 of 2022 ~ S.Ramesh to comply with the conditions imposed by this Court, dated 26.08.2019 in Crl.M.P.No.4791 of 2019 in Crl.R.C(MD) No.330 of 2019 by appearing before the trial Court, viz., Judicial Magistrate, Melur daily at 10.30 am., pending disposal of the revision filed by him in Crl.R.C(MD)

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6. Initially, the respondent police declined to register the case and the complainant approached this Court and filed a petition in Crl.O.P(MD) No.1923 of 2022 and this Court directed the respondent to register the case and conduct investigation and if the police comes to conclusion that no case is made out, then file a closure report. With the above observations, this Court directed the respondent police to register the case and thereafter, the case has been registered. To support his arguments, he placed reliance on the judgment of the Honourable Supreme Court in the case of Neeharika Infrastructure Pvt Ltd vs. State of Maharastra and Others reported in 2021 SCC Online SC 315. A reading of the First Information Report discloses the cognizable offence and it is not proper to quash the investigation at this stage and hence, he pleaded to dismiss the same.

7. I have considered the submissions of the learned Counsel appearing for the petitioner, the learned Counsel for the second respondent/defacto complainant and the learned Government Advocate(Crl.Side) appearing for the respondent police.

8. A perusal of the records reveals the fact that the defacto complainant on 07.04.2022 gave a complaint to the respondent police . In the complaint, he has alleged that he is working as a Personal Assistant to Dr.S.Gurusankar at Meenakshi Mission Hospital and Research Centre, Madurai. Dr.Rajam Sethuraman, mother of the petitioner died on 20.06.2021. The second legal heir/the petitioner herein had taken 2 « kilogram of gold jewels out of 10 kg of gold, 4 diaries and four original title deeds from the residence at Ayyar Bungalow, Sri Nagar, Vaigai 2nd Street, Door No.251/1, Thirugnana Sambathar Thirumaaligai, Madurai. This was questioned by the complainant, for which, he abused in filthy language and also criminally intimidated him. Hence, he gave a complaint. Further, from the perusal of the records, it is seen that this Court in Crl.O.P(MD) No.1923 of 2022, vide order dated 02.02.2022 directed the respondent police to register the case and investigate in accordance with law. The relevant portion of the order reads as follows:
?5.I consciously refrain from going into the factual aspects. I make it clear that the second respondent cannot kept the complaint pending onhis
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?5.I consciously refrain from going into the factual aspects. I make it clear that the second respondent cannot kept the complaint pending onhis file. The second respondent is directed to conclude the enquiry into the petitioner-s complaint on merits and in accordance with law within a period of two weeks from the date of receipt of a copy of this order. At the end of the enquiry, if the second respondent comes to the conclusion that cognizable offences are made out, FIR shall be registered and action shall be taken in accordance with law. If the second respondent comes to the conclusion that no case is made out, then the petitioner shall be served with a copy of the closure report. So that the petitioner can take recourse to the remedies available under law. Either the petitioner can move this Court again for relief or the petitioner can go to the Jurisdictional Magistrate. The choice is left to the petitioner.?

9. Based on this direction, the case has been registered and investigation is going on. Further, the Hon-ble Supreme Court in the case of Neeharika Infrastructure Pvt Ltd vs. State of Maharastra and Others reported in 2021 SCC Online SC 315 has held as follows:
?57.From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following principles of law emerge:
i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;ii) Courts would not thwart any investigation into the cognizable offences;
iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;
iv) The power of quashing should be exercised sparingly with circumspection, in the ?rarest of rare cases?. (The rarest of rare cases standard in its application for quashing under Section 482Cr.P.C. is not to be confused with

the norm which has been formulated in the context of the death penalty, as explained previously by this Court);
v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;
vi) Criminal proceedings ought not to be scuttled at the initial stage;
vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;
viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however,recognised to secure the ends of justice or prevent the above of the process by Section 482 Cr.P.C.
ix) The functions of the judiciary and the police are complementary, not overlapping;
x) Save in exceptional cases where non~interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;
xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;
xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;
xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;
xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self~restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint?.

10. Taking into consideration the facts and legal decision and on perusal of the First Information Report, there is allegation of theft from the house of the petitioner. The fact is not disputed that the petitioner and the other legal heirs are living separately. Under these circumstances, it prima facie discloses the fact that any First Information Report has to be investigated by the police to find out the truth. Therefore, the genuineness or otherwise of the allegations made in the First Information Report cannot be decided while exercising the powers under Section 482 Cr.P.C.

11. Taking into consideration the principles taken by the Hon-ble Supreme Court in the case of Neeharika Infrastructure Pvt Ltd vs. State of

Maharastra and Others reported in 2021 SCC Online SC 315 and another case in State of Haryana vs.Ch.Bhajan Lal (AIR) 1992 SC 604), investigation has to be conducted to find out the truth and hence, I do not find any merit in the petition.

12. In view of the same, this Criminal Original Petition stands dismissed. Consequently, Crl.M.P(MD)No.7107 of 2022 is dismissed and Crl.M.P(MD)No.5560 of 2022 is closed. Further, Crl.M.P(MD)SR.No.26854 of 2022 is rejected.

22.08.2022
Internet:Yes
Index:Yes/No
Speaking/Non speaking order
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To

1. The Inspector of Police
Tallakulam Police Station
Madurai.

2.The Additional Public Prosecutor,
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